BALDWIN COUNTY, ALABAMA
TIM RUSSELL PROBATE JUDGE
Filed/cert. 5/28/2010 10:11 AM
TOTAL $ 73.00
21 Pages

1235600

BY-LAWS
OF
MAGNOLIA PLACE PHASE TWO PROPERTY OWNERS' ASSOCIATION, INC.

Prepared by:
Sam W. Irby
Irby & Heard, P.C.
Post Office Box 1031
317 Magnolia Avenue
Fairhope, Alabama 36533
(251)928-4555

BY-LAWS
OF
MAGNOLIA PLACE PHASE TWO PROPERTY OWNERS' ASSOCIATION, INC.

Table of Contents

BY-LAWS
OF
MAGNOLIA PLACE PHASE TWO PROPERTY OWNERS' ASSOCIATION, INC.

Article I
General

Section 1.01. Identity. The name of the **Association** shall be **Magnolia Place Phase Two Property Owners' Association, Inc.** (the "**Association**"). These are the **By-Laws** of the **Association**.

Section 1.02. Terms Defined.

A. "**Declaration**" shall mean that certain **Declaration of Covenants, Conditions and Restrictions of Magnolia Place Phase Two, a Planned Unit Development** filed in the **Office of the Judge of Probate of Baldwin County, Alabama** as the same may be amended from time to time in accordance with the terms of the **Declaration** ("**Magnolia Place Phase Two**"). All other terms used in these **By-Laws** shall have the meaning given to them in the **Declaration** and are incorporated by reference and made a part of these **By-Laws**.

B. "**Owners**" shall mean and refer to all present and future **Owners** of a fee simple interest or undivided fee interest in any **Lot** in **Magnolia Place Phase Two**.

C. "**Magnolia Place Phase Two**" shall mean and refer to **Magnolia Place Phase Two** as described in the ***Declaration***.

Section 1.03. Purpose. These are the **By-Laws** of the **Association** which is a **Nonprofit Alabama Corporation** organized pursuant to **Ala. Code 1975, §10-3A-1, et seq.** (the "**Nonprofit Act**"), for the purpose of administering **Magnolia Place Phase Two** which is located in **Baldwin County, Alabama** in accordance with the provisions of the **Declaration**. The **Association** shall not issue any shares of stock.

Section 1.04. Applicability of By-Laws. The provisions of these **By-Laws** are applicable to **Magnolia Place Phase Two** and to the use and occupancy of **Magnolia Place Phase Two**. All present and future **Owners**, **Mortgagees**, lessees and occupants of **Lots** and their employees, guests or invitees, and any other **Persons** who may use **Magnolia Place Phase Two** are subject to these **By-Laws**, the **Declaration**, and the **Rules and Regulations**. The acceptance of a **Deed** or conveyance or the entering into of a lease or the act of occupancy of a **Lot** shall constitute an agreement that these **By-Laws**, the **Rules and Regulations**, and the provisions of the **Declaration**, as they may be amended from time to time, will be complied with and are accepted and ratified.

Section 1.05. Principal Office. The principal office of the **Association** shall be located in **Baldwin County, Alabama**, or at such other place as may be designated by the **Board of Directors** or as the business of the **Association** may require. All books and records of the **Association** shall be kept at the principal office of the **Association**.

Section 1.06. Registered Office. The registered office of the **Association**, required by the **Nonprofit Act** to be maintained in the **State of Alabama**, may be, but need not be, identical to the principal office in the **State of Alabama**, and the address of the registered office may be changed from time to time by the **Board of Directors**.

Section 1.07. **Powers Reserved to the Declarant.** The operation and administration of **Magnolia Place Phase Two** shall be subject to the powers and authority reserved in the **Declaration** to the **Declarant**, or the successors and assigns of the **Declarant**.

Article II
Membership

Section 2.01. **Qualification**. The qualification for membership in the **Association** shall be ownership of a **Lot** in **Magnolia Place Phase Two**. No membership may be separated from the **Lot** to which said membership is appurtenant. The qualification for membership is more fully set out in the **Declaration**, the terms of which pertaining to membership are specifically incorporated in these **By-Laws** by reference.

Section 2.02. **No Additional Qualifications**. No initiation fees, costs or dues shall be assessed against any **Person** as a condition of the exercise of the rights of membership except such **Assessments**, levies, fees and charges as are specifically authorized by the **Declaration**.

Section 2.03. **Succession**. The membership of each **Owner** shall automatically terminate on the conveyance, transfer or other disposition of an interest of an **Owner** in the **Lot**. The membership of the **Owner** shall automatically be transferred to the new **Owner** succeeding to such ownership interest.

Article III
Meetings of Members

Section 3.01. **Annual Meeting**. A meeting of the **Members** of the **Association** must be held at least once each year. The annual meeting of **Members** shall be held on the first **Saturday** in the month of **November** in each year, beginning with the year **2011** at the hour of **10:00 a.m.**, or at such other time or such other day within such month as shall be fixed by the **Board of Directors** for the purpose of electing **Directors**, if the period of **Declarant Control** of the members of the **Board of Directors** has ended, and in any event, for the transaction of such other business as may come before the meeting. If the day of said meeting is a legal holiday in the **State of Alabama**, such meeting shall be held at the same hour on the next succeeding business day. If the election of members of the **Board of Directors** shall not be held on the day designated herein for any annual meeting of the **Membership**, or at any adjournment thereof, the **Board of Directors** shall cause the election to be held at a special meeting of the **Membership** as soon thereafter as may be convenient.

Section 3.02. **Special Meetings.** The **President** of the **Board of Directors** may call special meetings of **Members** for any purpose or purposes, unless otherwise prescribed by statute. In addition, special meetings of the **Members** may be called at any time by a **Majority** of the **Board of Directors**, and must be called by the officers of the **Association** upon receipt of a written request from **Members** entitled to cast **twenty percent (20%)** of the total votes in the **Association**. The notice of any special meeting of the **Members** shall be given to each **Member** of record as provided for in **Section 3.04.** of these **By-Laws.** The business conducted at a special meeting of the **Members** shall be limited to that stated in the notice of the meeting.

Section 3.03. **Place of Meeting**. The **Board of Directors** may designate any place, within or without the **State of Alabama**, as the place of meeting for any annual meeting or for any special meeting of the **Membership**. If no designation is made, or if a special meeting is otherwise called, the place of the meeting shall be the principal office of the **Association** in the **State of Alabama**.

Section 3.04. **Notice of Meetings.** Not less than ten (10) days nor more than sixty (60) days in advance of any meeting, the **Secretary** or other officer specified by the **Board of Directors** shall cause written notice of said meeting to be hand-delivered or sent prepaid by **United States** mail to the mailing address of the **Owner** of each **Lot** or to any other mailing address designated in writing by the **Owner**. The written notice of any meeting of **Members** must state the time and place of the meeting and the items on the agenda, including the general nature of any proposed amendment to the **Declaration** or **By-Laws**, any budget changes, and any proposed order to remove an officer or **Director**. Proof of such notice shall be given by the affidavit of the **Person** giving the notice. If written notice is mailed, such notice shall be deemed to be delivered when deposited in the **United States** mail addressed to the **Member** at his address as it appears on the records of the **Association**, with postage thereon prepaid.

Section 3.05. Waiver of Notice. Any **Member** or **Mortgagee** may waive the right to receive notice of any meeting by sending a written waiver to the **Board of Directors**. Notice of any meeting may be waived before or after the meeting, orally or in writing. Attendance by a **Member** at any meeting, either in **Person** or by proxy, shall constitute waiver of notice of such meeting.

Section 3.06. Fixing of Record Date. The **Board of Directors** may fix in advance a date as the record date for the purpose of determining the members entitled to notice of or to vote at any meeting of members or any adjournment thereof, or for any other proper purpose, such date in any case to be not more than thirty (30) days and, in case of a meeting of the **Membership**, not less than ten (10) days prior to the date on which the particular action requiring such determination of members is to be taken. If no record date is fixed for the determination of members entitled to notice of or to vote at a meeting of the **Membership**, the date on which notice of the meeting is mailed shall be the record date for such determination of members. When a determination has been made, as provided in this section, such determination shall apply to any adjournment thereof.

Section 3.07. Voting Lists. The officer or agent having charge of the records of members of the **Association** shall make, at least ten (10) days before each meeting of the **Membership**, a complete list of the members entitled to vote at such meeting, or any adjournment thereof, arranged in alphabetical order, with the address of each member and the number of votes to which he is entitled, which list, for a period of ten (10) days prior to such meeting, shall be kept on file at the principal office of the **Association** and shall be subject to inspection by any member making written request therefore at any time during usual business hours. Such list shall also be produced and kept open at the time and place of the meeting and shall be subject to the inspection of any member during the whole time of the meeting.

Section 3.08. Quorum. A quorum of **Members** for any meeting shall be deemed present throughout such meeting if **Members**, represented in **Person** or by proxy, holding **twenty percent (20%)** of the total votes entitled to be cast at such meeting are present throughout such meeting, except as otherwise provided by the **Articles of Incorporation**, by the **Declaration** or by these **By-Laws**. Any provision in the **Declaration** concerning quorums is specifically incorporated in these **By-Laws**.

Section 3.09. Adjournment for Lack of Quorum. In the absence of a quorum at any meeting of **Members**, a **Majority** of those **Members** entitled to vote at said meeting, present in **Person** or by proxy, shall have the power to adjourn the meeting, from time to time, without notice other than announcement at the meeting, until the requisite number of **Members**, present in **Person** or by proxy, shall be present. At such adjourned meeting at which the requisite number of votes shall be present, any business may be transacted which might have been transacted at the meeting as originally noticed.

Section 3.10. Majority Vote. The vote of **Members** entitled to cast a **Majority** of the votes represented at a meeting of the **Membership** at which a quorum is present shall be the act of the **Members** of the **Association**, unless the vote of a greater number is required by law, the **Declaration**, the **Articles of Incorporation** or these **By-Laws**.

Section 3.11. Proxies. At all meetings of the **Membership**, a **Member** may vote in **Person** or by proxy executed in writing by the **Member** or by his duly authorized attorney-in-fact. A proxy is void if it is not dated or purports to be revocable without notice. Such proxy shall be filed with the **Secretary** of the **Association** before or at the time of the meeting. No proxy shall be valid after **one (1) year** from the date of its execution, unless a shorter term is provided in the proxy.

Section 3.12. Minutes of Meetings. The minutes of all meetings of **Members** shall be kept in a book available for inspection by **Owners** or their authorized representatives at any reasonable time during regular business hours.

Section 3.13. **Open Meetings.** All meetings of the **Members** shall be open to all **Members** of the **Association**.

Section 3.14. **Voting Rights**. If only one of the multiple **Owners** of a **Lot** is present at a meeting of the **Association**, he is entitled to cast all the votes allocated to that **Lot**. If more than one of the multiple **Owners** are present, the votes allocated to that **Lot** may be cast only in accordance with the agreement of a majority in interest of the multiple **Owners**. There is a majority agreement if any one of the multiple **Owners** casts the votes allocated to that **Lot** without protest being made promptly to the person presiding over the meeting by any of the other **Owners** of the **Lot**.

Section 3.15. **Informal Action by Members**. Any action required to be taken at a meeting of the **Membership**, or any other action which may be taken at a meeting of the **Membership**, may be taken without a meeting if a consent in writing, setting forth the action so taken, shall be signed by all of the **Members** entitled to vote with respect to the subject matter thereof.

Section 3.16. **Order of Business.** The order of business at annual meetings of **Members** and, as far as practical, at all other meetings of **Members**, shall be:

Call to order
Calling of the roll and certifying of proxies
Proof of notice of meeting or waiver of notice
Reading and disposal of any unapproved minutes
Reports of officers
Reports of committees
Election of the **Board of Directors**
Unfinished business
New business
Adjournment

Section 3.17. **Proviso. Provided, However**, so long as the **Declarant** retains control of the **Association** as provided for in the **Declaration,** no meetings of **Members** shall be called unless called by the **Declarant**.

Article IV
Board of Directors

Section 4.01. **Governing Body and Number**. The affairs of the **Association** shall be managed and governed by a **Board of Directors**. The initial number of **Directors** in the **Association** shall consist of **three (3) Directors**. These **By-Laws** may be amended from time to time, as provided for herein, to increase or decrease the number of **Directors** of the **Association** to not less than **three (3)** nor more than **five (5) Directors**. The **Members** of the **Association** shall have the right to amend the number of the **Directors** at any regular or special meeting called for that purpose. Except as provided in these **By-Laws**, the **Directors** shall be **Members**.

Section 4.02. **Membership List**. At least **ten (10)** days before every election of the **Directors**, a complete list of the **Members** of the **Association**, arranged alphabetically, shall be prepared by the **Secretary**. Such list shall be maintained by the **Secretary** of the **Association** and shall be opened to examination by any **Member** at any reasonable time and on reasonable notice.

Section 4.03. **Qualification**. Except for the **Directors** appointed by the **Declarant** as provided for in the **Declaration**, each **Director** shall be an **Owner**. If an **Owner** is a trust, then the beneficiary of the trust may be a **Director**; and if an **Owner** is a corporation, partnership or limited liability company, then an officer, partner, member, or employee of such **Owner** may be a **Director**. If a **Director** shall cease to meet such qualifications during the term of said **Director**, said **Director** shall cease to be a **Director** and the place of said **Director** on the **Board of Directors** shall be vacant.

Section 4.04. **Appointment by the Declarant**. So long as the **Declarant** retains **Declarant Control** as provided for in the **Declaration**, the **Directors** shall be appointed by the **Declarant**, and may be removed by the **Declarant** at any time in accordance with the **Declaration**. The **Directors** appointed by the **Declarant** shall serve at the pleasure of the **Declarant.** The **Board of Directors** appointed by the **Declarant** need not be **Owners** or occupants.

Section 4.05. **Nomination for Election**. Except with respect to the **Directors** appointed by the **Declarant** as provided for in the **Declaration**, nomination for election to the **Board of Directors** shall be made from the floor at the annual meeting of **Members** or at any other meeting of **Members** called for the purpose of electing the **Directors**. Nominations shall also be made by a nominating committee appointed by the **Board of Directors** prior to the annual meeting of the **Members** or prior to any other meeting of **Members** called for the purpose of electing the **Directors**.

Section 4.06. **Election of the Board of Directors**. Except for the **Board of Directors** appointed by the **Declarant** as provided for in the **Declaration**, the **Board of Directors** shall be elected at the annual meeting of **Members** or at a special meeting called for that purpose. Within thirty days after the **Owners** are entitled to elect one or more **Directors**, a special meeting of the **Members** shall be called in accordance with the notice provisions contained in **Section 3.04.** of these **By-Laws** for the purpose of electing said **Director**. The election shall be conducted in the manner specified in these **By-Laws**.

The election of **Directors** shall be by secret ballot (unless dispensed with by unanimous consent). There shall be no cumulative voting. Those candidates receiving the greatest number of votes cast either in **Person** or by proxy shall be elected. At the initial election of the **Directors** after the release of **Declarant Control** as provided for in the **Declaration**, the candidate receiving the most votes shall serve a two year term, and the next two candidates receiving the most votes shall serve one year terms. At subsequent elections, the two vacancies shall be filled as follows: two **Directors** shall be elected, with the candidate receiving the most votes to serve a two year term, and the remaining candidate to serve a one year term.

Section 4.07. **Term**. Each **Director** appointed by the **Declarant** shall hold office until said **Director** resigns, is removed by the **Declarant**, or the term of said **Director** expires as provided for in these **By-Laws** and in the **Declaration**. Each **Director** elected by the **Members** shall hold office until their respective successors have been elected and qualified or until said **Director** resigns or is removed in any manner provided in these **By-Laws**.

Section 4.08. **Vacancies**. So long as the **Declarant** retains **Declarant Control** as provided in the **Declaration**, any vacancy in the position of a **Director** appointed by the **Declarant** shall be filled by the **Declarant**. Any vacancy in the position of a **Director** elected by the **Members** shall be filled by a **Majority** vote of the remaining **Board of Directors**, and any **Director** so elected shall hold office for a term equal to the unexpired term of the **Director** whom said **Director** succeeds.

Section 4.09. **Removal**. After release of **Declarant Control** as provided for in the **Declaration**, any **Director** may be removed for cause by the concurrence of two-thirds (2/3) of the total votes entitled to be cast by **Members** of the **Association** at a meeting of **Members** called for that purpose. The vacancy in the **Board of Directors** so created shall be filled by the **Members** at the same meeting.

Section 4.10. **Compensation**. A **Director** shall not receive any compensation for any services said **Director** may render to the **Association** as a **Director**. **Provided, However**, that any **Director** may be reimbursed for actual out-of-pocket expenses incurred by said **Director** in the performance of the duties of said **Director**.

Section 4.11. **Proviso**. **Provided, However**, so long as the **Declarant** retains **Declarant Control** of the **Association** as provided for in the **Declaration,** the **Directors** shall be appointed by the **Declarant** and there shall be no vote of the **Members** to elect the **Directors**.

Article V
Meetings of the Board of Directors

Section 5.01. **Regular Meetings**. A regular meeting of the **Board of Directors** shall be held without other notice than these **By-Laws** immediately after, and at the same place as, the annual meeting of the **Membership**; provided, however, any such regular meeting may be held at any other time or place which shall be specified in a notice given as hereinafter provided for special meetings, or in a consent and waiver of notice thereof, signed by all **Directors**. The **Board of Directors** may provide, by resolution, the time and place, within or without the **State of Alabama**, for the holding of additional regular meetings without other notice than such resolution.

Section 5.02. **Special Meetings**. Special meetings of the **Board of Directors** shall be held when called by the **President**, **Vice President** or **Secretary**, and must be called by the **Secretary** at the written request of one-third (1/3) of the votes of the **Board of Directors.** Not less than three days notice of the meeting shall be given by hand-delivery or sent by **United States** mail to the mailing address of each **Director**, or by telephone or electronic transmission. The notice of any meeting of the **Board of Directors** must state the time and place of the meeting and the items on the agenda, including the general nature of any proposed amendment to these **By-Laws**, any budget changes, and any proposed order to remove an officer or **Director**. Proof of such notice shall be given by the affidavit of the **Person** giving the notice.

Section 5.03. **Open Meetings**. All meetings of the **Board of Directors** shall be open to all **Members**, and notice of such meetings shall be posted conspicuously in **Magnolia Place Phase Two** at least forty-eight hours prior to the meeting, except in the event of an emergency. **Provided, However**, anything else contained in this **Section 5.03.** to the contrary notwithstanding, the meetings of the **Board of Directors** with its attorney to discuss confidential matters pertaining to any pending litigation or threat of pending litigation shall not be open to all members and no notice of such meeting shall be posted.

Section 5.04. **Waiver of Notice**. Any **Director** may waive notice of a meeting either before or after the meeting, or may consent to the holding of a meeting without notice. Attendance by any **Director** at a meeting shall constitute waiver of notice of the meeting, except when attendance is for the express purpose of objecting at the beginning of the meeting to the transaction of business on the grounds that the meeting was not lawfully called.

Section 5.05. **Quorum**. A quorum shall consist of the number of **Directors** entitled to cast a **Majority** of the votes of the entire **Board of Directors**. The acts of the **Board of Directors** approved by a **Majority** of the votes present at a meeting at which a quorum is present shall constitute the acts of the **Board of Directors**. The joinder of a **Director** in the action of a meeting by signing and concurring in the minutes of said meeting shall constitute the presence of such a **Director** for the purpose of determining a quorum.

Section 5.06. **Informal Action Without Meeting**. Any action permitted or required to be taken at a meeting of the **Board of Directors** may be taken without a meeting if written consent setting forth the action so taken shall be signed by all the **Board of Directors** and filed with the minutes of the proceedings of the **Board of Directors**.

Section 5.07. **Minutes of Meetings**. The minutes of all meetings of the **Board of Directors** shall be kept in a book available for inspection by the **Owners**, or their authorized representatives, or any **Directors** at any reasonable time during regular business hours.

Section 5.08. <u>**Presiding Officer**</u>. The presiding officer of meetings of the **Board of Directors** shall be the **President**. In the absence of the **President**, the **Directors** present shall designate one of their number to preside.

Section 5.09. <u>**Executive Session**</u>. The **Board of Directors** may adjourn a meeting and reconvene in executive session to discuss and vote upon personal matters, litigation in which the **Association** is or may become involved, and orders of business of a similar nature. The nature of any and all business to be considered in executive session shall first be announced in open session of the **Board of Directors**.

Section 5.10. <u>**Vacancies**</u>. Any vacancy occurring in the **Board of Directors** and any directorship to be filled by reason of an increase in the number of **Directors** may be filled by a **Majority** of the remaining **Directors**, except as otherwise provided in this <u>**Article V**</u>. A **Director** elected or appointed, as the case may be, shall be elected or appointed for the unexpired term of his predecessor in office.

Section 5.11. <u>**Resignations**</u>. Any **Director** of the **Association** may resign at anytime, either by oral tender of resignation at any meeting of the **Board** or by giving written notice thereof to the **Secretary** of the **Association**. Such resignation shall take effect at the time specified therefore, and the acceptance of such resignation shall not be necessary to make it effective.

Section 5.12. <u>**Place of Meeting**</u>. The **Board of Directors** may designate any place within or without the **State of Alabama** as the place of meeting for any regular or special meeting of the **Board of Directors**.

Section 5.13. <u>**Presumption of Assent**</u>. A **Director** of the **Association** who is present at a meeting of the **Board of Directors** at which action on any corporate matter is taken shall be presumed to have assented to the action taken unless his dissent shall be entered in the minutes of the meeting or unless he shall file his written dissent to such action with the person acting as the **Secretary** of the meeting before the adjournment thereof or shall forward such dissent by registered mail to the **Secretary** of the **Association** immediately after the adjournment of the meeting. Such right to dissent shall not apply to a **Director** who voted in favor of such action.

Section 5.14. <u>**Proviso**</u>. **Provided, However**, so long as the **Declarant** retains **Declarant Control** of the **Association** as provided for in the **Declaration**, there shall be no meetings of the **Board of Directors** unless called by the **Declarant**.

Article VI
<u>Powers and Duties of the Board of Directors</u>

Section 6.01. <u>**Powers Defined**</u>. The **Board of Directors** shall have the power to exercise all powers, duties and authority vested in the **Association** by the **Declaration**, the **Articles of Incorporation** or these **By-Laws**, except for such powers and duties reserved to the **Members** or the **Declarant**.

Section 6.02. <u>**Committees**</u>. The **Board of Directors** may, by resolution, appoint such committees as deemed appropriate in carrying out the purpose of the **Board of Directors**, and such committees shall have the powers of the **Board of Directors** for the management of the affairs and business of the **Association** to the extent provided in the resolution designating said committee. Any committee shall keep regular minutes of the proceedings of the committee and shall report the same to the **Board of Directors**.

Section 6.03. <u>**Managing Agent**</u>. The **Board of Directors** shall be authorized to employ the services of a manager or managing agent, who may either be a **Director**, officer, or employee of the **Association**, or an independent **Person** or firm qualified to manage the affairs of the **Association** under the supervision of the **Board of Directors**. The compensation paid to any such manager or managing agent shall be in the amount established from time to time by the **Board of Directors**.

Section 6.04. __Order of Business__. The order of business at the meetings of the **Board of Directors** shall be:

Call of roll
Proof of due notice of meeting
Reading and disposal of unapproved minutes
Reports of officers and committees
Election of officers
Unfinished business
New business
Adjournment.

Section 6.05. __Borrowing__. The **Board of Directors** shall have the power to borrow money pursuant to the terms and conditions of the **Declaration**.

Section 6.06. __Veto by the Declarant__. So long as the **Declarant** retains **Declarant Control** of the **Association** as provided for in the **Declaration**, the **Declarant** shall have the veto power over all actions of the **Board of Directors**.

Section 6.07. __Architectural Committee__. The **Board of Directors** shall appoint an **Architectural Committee** in accordance with the provisions of the **Declaration**.

Article VII
Officers

Section 7.01. __Executive Officers__. The executive officers of the **Association** shall be a **President**, who shall be a **Director**; a **Vice President**, who shall be a **Director**; and a **Secretary-Treasurer**; who shall be a **Director**; all of whom shall be elected annually by the **Board of Directors** and who may be removed by **Majority** vote of the **Board of Directors** at any meeting. Any **Person** may hold two or more offices, except that the **President** shall not also be the **Secretary**. The **Board of Directors** shall from time to time elect such other officers and designate their powers and duties as the **Board of Directors** shall find to be required to manage the affairs of the **Association**.

Section 7.02. __Term__. Each officer shall hold office for a term of **one (1)** year and until the successor of said officer shall have been appointed or elected and qualified, provided that any officer may serve unlimited multiple terms of office.

Section 7.03. __Resignation and Removal__. Any officer may be removed from office either with or without cause by the vote of a **Majority** of the **Board of Directors** present at any meeting. Any officer may resign at any time by giving written notice to the **Board of Directors**. Such resignation shall take effect on the date of receipt of said resignation or at any later time specified in said written notice, and, unless otherwise specified in said written notice, the acceptance of such resignation shall not be necessary to make said resignation effective.

Section 7.04. __Vacancies__. A vacancy in any office shall be filled by a **Majority** vote of the **Board of Directors** at any meeting. An officer elected to fill a vacancy shall hold office for a term equal to the unexpired term of the officer that said officer succeeds.

Section 7.05. __Compensation__. An officer shall not receive any compensation for any services said officer may render to the **Association** as an officer. **Provided, However**, that any officer may be reimbursed for actual out-of-pocket expenses incurred by said officer in the performance of the duties of said officer.

Section 7.06. <u>President</u>. The **President** is the chief executive officer of the **Association** and shall have all the powers and duties that are usually vested in the office of **President** of a property owners' association including, but not limited to, the following powers:

- **A.** To preside over all meetings of the **Members** and of the **Board of Directors**.
- **B.** To sign as **President** all **Deeds**, contracts and other instruments that have been duly approved by the **Board of Directors**.
- **C.** To call meetings of the **Board of Directors** whenever the **President** deems necessary.
- **D.** To have the general supervision, direction and control of the affairs of the **Association**.

Section 7.07. <u>Vice President</u>. The **Vice President** shall have all the powers and duties that are usually vested in the office of the **Vice President** of a property owners' association. The **Vice President** shall, in the absence of or disability of the **President**, exercise the powers and perform the duties of the **President**. The **Vice President** shall also generally assist the **President** and exercise such other powers and perform such other duties as shall be prescribed by the **Board of Directors**.

Section 7.08. <u>Secretary</u>. The **Secretary** shall have all the powers and duties that are usually vested in the **Secretary** of a property owners' association. The **Secretary** shall keep the minutes of all proceedings of the **Board of Directors** and the **Members**. The **Secretary** shall attend to the giving and serving of all notices to the **Members** and the **Board of Directors** and other notices required by law. The **Secretary** shall have custody of the seal of the **Association** and affix the same to instruments requiring a seal when duly signed. The **Secretary** shall sign as **Secretary** all **Deeds**, contracts, and all other instruments which have been duly approved by the **Board of Directors**, if said instrument requires the signature or attestation of the **Secretary**. The **Secretary** shall keep the records of the **Association**, except those of the **Treasurer**, and shall perform all other duties incident to the office of the **Secretary** of an **Association** as may be required by the **Board of Directors** or the **President**.

Section 7.09. <u>Treasurer</u>. The **Treasurer** shall be the financial officer of the **Association** and shall have all the powers and duties that are usually vested in the **Treasurer** of a property owners' association. The **Treasurer** shall have custody of all property of the **Association**, including funds, securities and evidences of indebtedness. The **Treasurer** shall keep the financial records and books of account of the **Association** in accordance with good accounting practices. The **Treasurer** shall keep detailed, accurate records in chronological order of the receipts and expenditures affecting the **Common Areas** and common facilities, specifying and itemizing the maintenance and repair expenses of the **Common Areas** and common facilities and any other expenses incurred; and the **Treasurer** shall perform all other duties incident to the office of the **Treasurer**. The records, books of account and the vouchers authorizing payments shall be available for examination by a **Member** at reasonable times during regular business hours.

Section 7.10. <u>Seal</u>. The corporate seal shall be circular in form and shall contain the name of the corporation and the words "**Corporate Seal**". Said seal may be used by causing it or a facsimile thereof to be impressed, affixed, reproduced, inscribed, or otherwise.

Section 7.11. <u>Salaries</u>. The salaries of the officers, if any, shall be fixed from time to time by the **Board of Directors**, and no officer shall be prevented from receiving such salary by reason of the fact that he is also a **Director** of the **Association**.

Article VIII
Books and Records and Fiscal Management

Section 8.01. **The Fiscal Year.** The fiscal year of the **Association** shall be such as shall from time to time be established by the **Board of Directors**.

Section 8.02. **Accounting**. The **Association** shall keep correct and complete books and records of account and shall keep minutes of the proceedings of the members, **Board of Directors** and committees thereof and shall keep at its registered or principal office in **Alabama** a record of the names and addresses of the members entitled to vote for directors and officers. The accounting records shall be maintained in accordance with generally accepted account principles. All books and records of the **Association** shall be open to inspection by the members or their authorized representatives for any proper purpose at any reasonable time in **Baldwin County, Alabama**. Such records shall include:

A. **Association Accounts.** The receipts and expenditures of the **Association** shall be credited and charged to the appropriate account as set forth below.

(i) **Current Expenses**. All funds to be expended during the year for the maintenance of the **Common Areas** (as defined in the **Declaration**) and the operation and working capital of the **Association** shall be held in the **Current Expense Account**. Any balance in this fund at the end of each year may be used to pay **Common Expenses** incurred in any successive year or may be placed in the **Reserve Fund Account**.

(ii) **Reserve Funds**. All funds to be expended for replacement, acquisition and repair of capital improvements which are a part of **Common Areas** shall be held in the **Reserve Fund Account**.

B. **Member Accounts**. An account for each member shall be maintained setting forth the name and address of the **Member**, the interest percentage in the **Common Areas**, if any, the amount of each **Assessment**, the amounts and dates on which the **Assessments** become due, the amounts paid upon the account and the balance due.

Section 8.03. **Budget.** At least **ninety (90) days** prior to the beginning of each calendar year, the **Board of Directors** shall adopt a proposed budget for each calendar year that shall include the estimated funds required to defray the **Common Expenses** and to provide and maintain funds for the foregoing accounts and reserves according to good accounting practices. Within **thirty (30) days** of adoption of the proposed budget, copies of the budget and proposed **Assessments** shall be transmitted to each member of the **Association** and a date set for a meeting of the **Lot Owners** to consider ratification of the budget, not less than **fourteen (14) days** nor more than **thirty (30) days** after delivery of the budget to the **Lot Owners**. Unless, at the meeting, a **Majority** of all **Lot Owners** present in person or by proxy reject the budget, the budget is ratified, whether or not a quorum is present. In the event the proposed budget is rejected, the budget for the last year shall continue in effect until such time a new budget is ratified.

Section 8.04. **Assessments. Assessments** for **Common Expenses** shall be established as provided for in the **Declaration** and these **By-Laws**. **Assessments** shall be collected by the **Association** on a monthly basis as follows: On or before the first day of each month for which the **Assessments** are made each **Owner** shall pay the share of said **Owner** in the **Common Expenses** as shown by the budget. The **Board of Directors** may cause to be sent to each **Owner**, on or before the first day of each month, a statement of the monthly **Assessments**. However, the failure to send or receive such monthly statement shall not relieve the **Owner** of the obligation of the **Owner** to make timely payment of the **Assessments**. If the **Board of Directors** shall not approve an annual budget or shall fail to determine new **Assessments** for any year, or shall be delayed in doing so, each **Owner** shall continue to pay the amount of the **Assessment** of said **Owner** as last determined. **Provided, However,** the **Board of Directors** shall have the power to amend the period of the installment payments to be due and payable to provide for annual, quarterly, monthly or any other period of installment payment.

Section 8.05. **Assessments for Emergencies.** Subject to the terms and conditions of the **Declaration**, **Assessments** for **Common Expenses** for emergencies that cannot be paid from the annual **Assessments** for **Common Expenses** shall be made only after notice of the need for such is given to the **Members** concerned, and it shall be due **thirty (30) days** after such notice in such manner as the **Board of Directors** may require in the notice of **Assessment**. Such **Assessments** shall constitute a lien as provided for in the **Declaration**.

Section 8.06. **Audit or Compilation.** An audit or compilation of the accounts of the **Association** shall be made annually by a certified public accountant, and a copy of the audit report shall be made available for examination by each member in **Baldwin County, Alabama**.

Section 8.07. **Lien for Assessments.** If any **Owner** shall fail or refuse to make any payment of the **Assessments** when due, the amount due, together with costs, reasonable attorney's fees and interest thereon at a rate to be set by the **Board of Directors** but in no event greater than eighteen percent rate per annum from and after the date said **Assessments** became due and payable in accordance with the **Declaration** and shall constitute a lien on the interest of the **Owner** in the **Lot**.

Section 8.08. **Acceleration of Assessment Installments Upon Default.** If an **Owner** shall be in default in the payment of an installment upon any **Assessment**, the **Board of Directors** may accelerate the remaining installments of such **Assessment** upon notice to the **Owner**, and thereupon the unpaid balance of the **Assessment** shall come due upon the date stated in the notice, but not less than ten days after hand-delivery to the **Owner**, or not less than twenty days after posting such notice in the **United States** mail to said **Owner** by registered or certified mail, postage prepaid, whichever shall first occur. Upon default in the payment of an installment upon any **Assessment**, the **Board of Directors** shall be entitled to charge interest and service charges at the highest available rate allowable under **Alabama** law.

Section 8.09. **Default.** In the event an **Owner** of a **Lot** does not pay any sums, charges or **Assessments** required to be paid to the **Association**, the **Association** may foreclose the lien encumbering the **Lot** created by non-payment of the required monies in accordance with the **Declaration**; provided that thirty days prior notice of the intention to foreclose shall be by **United States** mail, postage prepaid, to the **Owner** and to all **Mortgagees** as shown in the records of ownership of the **Association**. The **Association** shall be entitled to the appointment of a receiver, if the **Association** so requests. The **Association** shall have the right to bid-in the **Lot** at a foreclosure sale and to acquire, hold, obtain a **Mortgage** and convey the **Lot**. In any such foreclosure action, the lien of the **Association** shall be as stated in the **Declaration**. In lieu of foreclosing the lien of the **Association**, the **Association** may bring suit to recover a money judgment for any sums, charges or **Assessments** required to be paid to the **Association** without waiving the lien of the **Association** securing same. In any action either to foreclose the lien of the **Association** or to recover a money judgment, brought by or on behalf of the **Association** against an **Owner**, the defendants shall pay the cost together with a reasonable attorney's fee.

If the **Association** becomes the **Owner** of a **Lot** by reason of foreclosure, the **Association** shall offer said **Lot** for sale and at such time as a sale is consummated the **Association** shall deduct from such proceeds all sums of money due the **Association** for **Assessments** and charges, all costs incurred in the bringing of the foreclosure suit, including reasonable attorney's fees, and any and all expenses incurred in the resale of the **Lot**, which shall include but not be limited to advertising expenses, real estate brokerage fees and expenses necessary for the repairing and refurbishing of the family **Lot** in question. All monies remaining after deducting the foregoing items of expense shall be returned to the former **Owner** of the **Lot** in question.

Section 8.10. **Supplemental Assessments.** If during the course of any fiscal year, the **Board of Directors** determines that the **Assessments**, as established in the annual budget, are insufficient or inadequate to cover the estimated **Common Expenses** for the remainder of such year, then the **Board of Directors** shall prepare and approve a supplemental budget covering the estimated deficiency. Copies of the supplemental budget shall be delivered to each **Owner**, and a supplemental **Assessment** shall be made to each **Owner** for the share of the supplemental budget of said **Owner**.

Section 8.11. **Annual Statement.** Within sixty days after the end of each fiscal year, the **Board of Directors** shall cause to be furnished to each **Owner**, a statement for the year so ended showing the receipts and expenditures of the **Association**, and such other information as the **Board of Directors** may deem desirable.

Section 8.12. **Accounting Records.** The **Board of Directors** shall cause to be kept, in accordance with generally accepted accounting principles, a record of all receipts and expenditures; and a separate account for each **Lot** showing the **Assessments** or other charges due, the due dates of said **Assessments** or charges and the present balance due. Such accounting records shall be open to inspection by **Owners** at reasonable times during regular business hours.

Section 8.13. **Fidelity Bonds.** Fidelity bonds shall be required by the **Board of Directors** from all officers and employees of the **Association** and from any manager handling or responsible for **Association** funds and from any employee, agent or subcontractor of a manager handling or responsible for the **Association** funds. The amount of such bonds shall be determined by the **Board of Directors**, but shall be at least the amount of one hundred and fifty percent of the total annual **Assessments** against **Members** for recurring expenses. The premiums on such bonds shall be paid by the **Association**.

Section 8.14. **Insurance and Casualty Loss**. The **Board of Directors** shall comply with all of the provisions of the **Declaration** pertaining to insurance and casualty loss.

Section 8.15. **Records of the Association**. The **Association** shall make available copies of the records of the **Association** pursuant to the requirements of the **Declaration**.

Section 8.16. **Notices to Lenders**. The **Association** shall provide notices to lenders required by the **Declaration**.

Section 8.17. **Fiscal Management**. The terms and provisions of the **Declaration** pertaining to fiscal management are incorporated in these **By-Laws** as if fully set out as an exhibit.

Article IX
Contracts, Loans, Checks and Deposits

Section 9.01. **Contracts.** The **Board of Directors** may authorize any officer or officers, agent or agents to enter into any contract or execute and deliver any instrument in the name of and on behalf of the **Association**, and such authority may be general or confined to specific instances.

Section 9.02. **Loans.** No loans shall be contracted on behalf of the **Association** and no evidences of indebtedness shall be issued in its name unless authorized by a resolution of the **Board of Directors**. Such authority may be general or confined to specific instances.

Section 9.03. **Checks, Drafts, Etc.** All checks, drafts or other orders for the payment of money, notes or other evidences of indebtedness issued in the name of the **Association**, shall be signed by such officer or officers, agent or agents of the **Association** and in such manner as shall from time to time be determined by resolution of the **Board of Directors**.

Section 9.04. **Deposits.** All funds of the **Association** not otherwise employed shall be deposited from time to time to the credit of the **Association** in such banks, trust companies or other depositories as the

Board of Directors may select.

Section 9.05. **Attorney or Agent.** Unless otherwise provided by resolution of the **Board of Directors**, the **President** may from time to time appoint an attorney or agent of the **Association**, in the name and on behalf of the **Association**, to cast the votes which the **Association** may be entitled to cast as the holder of stock or other securities in any other corporation any of whose stock or other securities may be held by the **Association**, at meetings of the holders of the stock or other securities of such other corporation, or to consent in writing, in the name and on behalf of the **Association**, as such holder, to any action by such other corporation, and may instruct the person or persons so appointed as to the manner of casting such votes or giving such consent, and may execute or cause to be executed, in the name and on behalf of the **Association** and under its corporate seal or otherwise, all such written proxies or other instruments as he may deem necessary or proper in the premises.

Article X
Obligations of the Owners

Section 10.01. **Assessments.** Every **Owner** of any **Lot** shall contribute toward the expense of administration of the **Association**, as provided in the **Declaration** and in these **By-Laws**. Each **Assessment** against a **Lot** shall also be the personal obligation of the **Owner** at the time the **Assessment** fell due.

Section 10.02. **Maintenance and Repair.** Every **Owner** of any **Lot** shall promptly perform all maintenance and repair work, as provided in the **Declaration** or these **By-Laws**. An **Owner** shall reimburse the **Association** for any expenditures incurred in repairing or replacing any **Common Areas** or common facilities damaged through the fault of the **Owner** or the fault of the family, guests, or invitees of the **Owner**.

Section 10.03. **Use of Lots.** All **Lots** shall be used in accordance with the provisions of the **Declaration**, these **By-Laws** and the **Rules and Regulations**.

Article XI
Rules and Regulations

Section 11.01. **Rules and Regulations**. The **Declarant** or the **Board of Directors** may from time to time and subject to the rights of **Declarant Control** provided for in the **Declaration**, adopt, modify, amend or add to **Rules and Regulations** concerning the use of **Magnolia Place Phase Two**. Copies of such **Rules and Regulations** shall be hand-delivered or posted by **United States** mail, postage prepaid, to each **Owner** not less than fourteen days prior to the effective date of said **Rules and Regulations**. No **Rules or Regulations** may be adopted by the **Association** that conflicts with the **Declaration**, the **Articles of Incorporation** or these **By-Laws**.

Section 11.02. **Hearing Procedure**. The **Board of Directors** shall not impose a fine, suspend voting or infringe upon any of the rights of a **Member** or other occupant for violations of the **Rules and Regulations** or the **Declaration**, these **By-Laws** or **Articles of Incorporation**, unless and until the following procedure is followed:

A. **Demand**. Written demand to cease and desist from an alleged violation shall be hand-delivered or posted by **United States** mail, postage prepaid, to the alleged violator specifying: **(i)** the alleged violation; **(ii)** the action required to abate the violation; and **(iii)** a time period not less than ten days, but in the case of an emergency immediate notice may be given, during which the violation may be abated without further sanction, if such violation is a continuing one, or a statement that any further violation of the same rule may result in the imposition of a sanction after notice and a hearing that the violation is not continuing.

B. **Notice**. At any time within twelve months of such demand, if the violation continues past the period allowed in the demand for abatement without penalty or if the same is subsequently violated, the **Board of Directors** or a delegate of the **Board of Directors** shall hand-deliver or by **United States** mail written notice to the violator of a hearing to be held by the **Board of Directors** or a committee appointed by the **Board of Directors**. The notice shall contain: **(i)** the nature of the violation; **(ii)** the time and place of the hearing, which time shall not be less than ten days from the giving of the notice, but in the case of an emergency immediate notice may be given; **(iii)** an invitation to attend the hearing and produce any statement, evidence and witness on behalf of the violator; and **(iv)** the proposed sanction to be imposed.

C. **Hearing**. The hearing shall be held in executive session pursuant to the notice affording the **Member** a reasonable opportunity to be heard. Prior to the effectiveness of any sanction under these **By-Laws**, proof of notice and the invitation to be heard shall be placed in the minutes of the meeting. Such proof shall be deemed adequate if a copy of the notice, together with a statement of the date and manner of delivery, is entered by the officer, **Director** or agent who delivered such notice. The notice requirement shall be deemed satisfied if the alleged violator appears at the meeting. The minutes of the meeting shall contain a written statement of the results of the hearing and the sanction, if any, imposed.

D. **Appeal**. If a hearing is before a committee of the **Board of Directors**, following said committee hearing, the violator shall have the right to appeal the decision to the **Board of Directors**. To perfect this right, written notice of appeal must be received by the **President** or **Secretary** within thirty days after the hearing date.

Article XII
Amendments to the By-Laws

Section 12.01. Adoption. These **By-Laws** may be altered, amended or repealed or new **By-Laws** may be adopted in the following manner:

A. **By the Board.** By the **Board of Directors** for such period of time as the **Declarant** has the right to elect at least a **Majority** of the members of the **Board of Directors** of the **Association** in accordance with the **Declaration**; and thereafter,

B. **By the Members**. By the members at any regular or special meeting upon the affirmative vote of the holders of not less than **sixty-six and 2/3 percent (66 2/3%)** of the outstanding votes present and entitled to vote at such meeting in person or represented by proxy, at which a quorum is present.

Section 12.02. Prohibited Amendments. No amendment of these **By-Laws** may be adopted that would eliminate, modify, prejudice, abridge or otherwise adversely affect any rights, benefits, privileges or priorities granted by these **By-Laws** to the **Declarant**. No amendment that is in conflict with the **Articles of Incorporation**, the **Declaration**, or **Alabama** law shall be adopted.

Section 12.03. Recording. Any amendment to these **By-Laws** shall become effective when recorded in the **Office of the Judge of Probate of Baldwin County, Alabama**.

Article XIII
Miscellaneous

Section 13.01. Construction. Wherever the context so permits, the singular shall include the plural; the plural shall include the singular; and the use of the gender shall be deemed to include all genders.

Section 13.02. Captions. The captions in these **By-Laws** are inserted only as a matter of convenience for reference, and in no way define, limit or describe the scope of these **By-Laws** or the intent of any provision of these **By-Laws**.

Section 13.03. Conflicts. If there are conflicts or inconsistencies between the provisions of **Alabama** law, the **Articles of Incorporation**, the **Declaration** and these **By-Laws**, the provisions of **Alabama** law, the **Declaration**, the **Articles of Incorporation** and these **By-Laws** (in that order) shall prevail.

Section 13.04. Compliance. These **By-Laws** are intended to comply with the requirements of **Alabama** law which shall be considered an appendage to the **Declaration** and the **Articles of Incorporation** filed with these **By-Laws**.

Section 13.05. Right of Entry. The manager and any **Person** authorized by the **Board of Directors** shall have the right to enter each **Lot, Dwelling**, structure or **Improvement** in case of any emergency originating in or threatening such **Lot, Dwelling**, structure or **Improvement** whether or not the **Owner** or occupant is present at the time.

Section 13.06. Parliamentary Rules. **Roberts Rules of Order** (latest edition) shall govern the conduct of the meetings of the **Association** or the **Board of Directors** when not in conflict with the **Declaration** or these **By-Laws**.

Section 13.07. Waiver of Notice. Whenever any notice is required to be given to any **Member** or **Director** of the **Association** under the provisions of these **By-Laws**, the **Articles of Incorporation**, the **Declaration**, the provisions of the **Nonprofit Act**, and any act amendatory thereof, supplementary thereto or substituted therefore, or the **Alabama Constitution**, a waiver thereof in writing, signed by the person or persons entitled to such notice, whether before or after the time stated therein, shall be deemed equivalent to the giving of such notice.

Section 13.08. Indemnification. The **Association** shall have the right to indemnify any person who was or is a party or is threatened to be made a party to any threatened, pending or completed action, suit or proceeding, by reason of the fact that he is or was a **Director**, officer, employee or agent of the **Association**. The indemnification provided for herein shall not be deemed exclusive of and shall be in addition to any other rights to which those seeking indemnification may be entitled under any by-law, agreement, vote of members or disinterested **Directors** or otherwise, both as to action in his official capacity and as to action in another capacity while holding such office, and shall continue as to a person who has ceased to be a **Director**, officer, employee or agent and shall inure to the benefit of the heirs, executors and administrators of such a person.

Section 13.09. Registered Office and Agent.

The location and the mailing address of the initial registered office is:

Location Address:	215 E. 1st Street Bay Minette, Alabama 36507
Mailing Address:	Post Office Box 579 Bay Minette, Alabama 36507

The name of the initial registered agent of the **Association** is **T.E. Mitchell**.

These are the **By-Laws** of **Magnolia Place Phase Two Property Owners' Association, Inc.**, adopted by the **Board of Directors** on the 10th day of May, 2010.

T.W. Mitchell, II
Secretary-Treasurer

Approved:

T.E. Mitchell
President

THIS INSTRUMENT PREPARED BY:
Sam W. Irby
Irby & Heard, P.C.
Attorneys at Law
317 Magnolia Avenue
Post Office Box 1031
Fairhope, Alabama 36533
(251)928-4555

F:\WDDOCS\IHDOCS\3321\09447\CORP\00239484.DOC